

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES)
)
VS)
)
JUAN FUNES)

1:11-CR-00080-WES-PAS

DEFENDANT'S SENTENCING RECOMMENDATION

I. Background.

Juan Funes has admitted violation of several terms and conditions of his supervised release including: (1) positive tests or admissions of the use of cocaine; (2) positive tests or admissions to drinking of alcohol; (3) failing to report for substance abuse testing; and (4) failing to report to the probation officer as instructed. All of the above admitted violations have occurred after May 14, 2019

II. Defendant Juan Funes.

Juan Funes is a long term alcoholic. Cirrohsis of the liver and resultant failing liver problems have come close to taking his life on at least one occasions previously. He has other physical ailments. He is covered by Neighborhood Health and Medicaid.

III. In a recent training to CJA appointed counsel, the question of substance abuse and substance use was discussed. The case in chief as topic was Commonwealth v. Eldred, 101 N.E. 3d 911 (Mass SJC, 2018). Eldred was a violation of probation case similar to the within case which is a violation of supervised release. In both cases, a court order to not use a controlled substance or alcohol was violated. The Court upheld the legitimacy of such court orders and court sanctions for violations of such orders, including sanctions of incarceration.

As in Eldred, there is no specific professional diagnosis in this case of Juan Funes as suffering from Substance Use Disorder as defined in the Diagnostic and Statistical Manuel of Menal Disorders, 5th Ed. (DSM 5).

2.

Defendant attaches a letter from his current and most recent counsellor to this sentencing recommendation.

In part an addiction, i.e., a severe substance abuse disorder, is characterized by intense cravings and compulsive use that occur despite negative consequences. A Substance Use Disorder (SUD), at page 483 of the DSM) is a "cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems". "An important characteristic of substance abuse disorders is an underlying change in brain circuits that may persist beyond detoxification, particularly in individuals with severe disorders." "The behavioral effects of these brain changes may be exhibited in the repeated relapses and intense drug cravings when the individuals are exposed to drug-related stimuli..."

IV. Sentencing Orientation. As stated well in Eldred, pages 8 and 9, supra.:

"From crafting special conditions of probation to determining the appropriate disposition for a defendant who has violated one of those conditions, judges should act with flexibility, sensitivity, and compassion when dealing with people who suffer from drug addiction. The rehabilitative goals of probation, coupled with the judge's dispositional flexibility at each stage of the process, enable and require judges to consider the unique circumstances facing each person they encounter -- including whether that person suffers from drug addiction. This individualized approach to probation fosters an environment that enables and encourages recovery, while recognizing that relapse is part of recovery."

V. Juan Funes' Recommendation.

a. 3 Months Detention. In descending preferential order said three months to be imposed:

- (1) 30 Days at Wyatt with 2 months at Houston House;
- (2) 60 days at Wyatt with 1 month at Phoenix House Inpatient;
- (3) 90 days at Wyatt

b. Supervised Release Termination at conclusion of detention.

3.

VI. Allocution. Juan Funes will allocute.

Respectfully submitted,

JUAN FUNES
by his attorney,

/s/ Robert D. Watt Jr.

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Date: August 8, 2019

CERTIFICATION

I hereby certify that I did on the 8th day of August 2019 file the within sentencing memorandum with attachment using the ECF electronic filing system and did thereby provide service to Milind Shah, Assistant U.S. Attorney and Timothy G. Donohue, U.S. Probation Officer.

Robert D. Watt Jr.
